STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-83

March 24, 2003

PUBLIC UTILITIES COMMISSION
Waiver of Certain Requirements of
Chapter 820 with Regard to
Promotional Activities

ORDER

Welch, Chairman; Nugent and Diamond, Commissioners

I. SUMMARY

We previously have granted Bangor Gas Company (BGC) and Maine Natural Gas Company (MNG) the authority to engage in promotional activities without prior Commission approval. In this Order, for good cause, for both BGC and MNG, we waive certain requirements of Chapter 820 that would otherwise apply to promotional activities in excess of the *de minimis* threshold level until the time of their first rate review.[1] We make no assurances that the costs of these programs will be recoverable in future rates. [2]

II. BACKGROUND AND DISCUSSION

A. Promotional Programs

We have previously granted CMP Natural Gas (now MNG) the ability to provide promotional allowances. See *Central Maine Power Company*, Docket No. 1996-786, Order Approving Rate Plan (December 17, 1998) at 10, footnote 9. Section A of MNG's initial Terms and Conditions stated that

> [t]he Company may, from time to time, offer promotional allowances for the purposes of encouraging the selection, use or increased usage of the Company's service. The promotional allowances may be offered to any service classifications subject to prior generic approval by the MPUC.

[1] Northern currently has no promotional activities that exceed the *de minimis* threshold of Chapter 820. In addition, Northern's size and relative annual gross revenues and capitalization give the Company much more latitude to offer promotional programs. Therefore, we do not need to include them in this waiver at this time.

[2] We issued a Proposed Order on February 11, 2003 containing the resolution described herein. Both the Office of the Public Advocate and MNG filed comments in support of it.

See Maine Natural Gas Corporation, Terms and Conditions, page 18.0 Original, Section A, March 5, 1999.[3]

Since that time, MNG has initiated various promotional programs. For example, MNG has offered rebates for conversion burners and clothes dryers. *Maine Natural Gas Corporation*, Docket No. 2001-236, Order (May 14, 2001).

Bangor Gas has been granted similar latitude to conduct promotional programs. While it is not plainly stated in the Order that established BGC, (*Bangor Gas Company*, Docket No. 1997-795, Order, (June 26, 1997)), it is explicitly granted in Bangor *Gas Company LLC*, Docket No. 2001-287, Order (May 14, 2001). In that Order, the Commission clarified that BGC has "written approval...to implement promotional allowance programs without further direct oversight" and ordered "that BGC shall file rate schedules describing the Promotional Programs it plans to offer for inclusion with its Terms and Conditions." Order at 3. Since that time Bangor Gas has filed rate schedules describing several programs, including a finance program, a conversion burner program, a contract management program, and the neighbor-to-neighbor program.[4] BGC and MNG are required by Chapter 830 to fulfill annual reporting requirements regarding their promotional and marketing activities including filing copies of the promotional materials.[5]

The Commission has generally supported and approved promotional programs, such as no-interest conversions, and has taken the position that these load-building programs are particularly appropriate for start-up LDCs. Load building can be beneficial for existing and potential customers of any LDC, because gas companies must realize certain economies of scale in order to operate efficiently and cost effectively.[6]

Chapter 820(3) requires that non-core activities that exceed a *de minimis* threshold be conducted in a separate entity. Such non-core services may be subject to investment limitations. Under Chapter 820, non-core activities are also subject to specific methodologies for (1) valuation of services and assets shared by a utility and its affiliate and (2) assets transferred between the utility and its affiliate. In addition, Chapter 820 requires below-the-line treatment of revenues and expenses for ratemaking purposes. Finally, such activities are subject to certain reporting requirements and affiliate standards of conduct. Chapter 820, sections 4-6 and 8.

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[3] MNG now has revised Terms and Conditions that took effect February 17, 2003.

[4] See BGC Terms and Conditions, Original Sheet No. 59, First Revision, Effective Date August 11, 2002.

[5] We note that in recent years companies have not been fully complying with the requirements of Chapter 830 and take this opportunity to remind them of these requirements.

[6] In fact, BGC has had some difficulty attracting bidders to serve its load in the early stages of operation, in part because of the relatively small size of its load.

The *de minimis* exemption applies when investment in a service does not exceed 0.1% of the utility's capitalization and total gross revenues received from providing that service do not exceed 0.1% of the utility's annual gross revenues. The rule also allows the Commission to grant a waiver on its own motion of the requirements of Chapter 820 that are not mandated by statute upon finding good cause and that the waiver would not be inconsistent with the purpose of the Chapter.[7]

Our review of BGC and MNG's annual report information suggests that promotional expenditures are routinely exceeding the companies' *de minimis* thresholds. It appears that a start-up company with low initial gross revenues will very quickly reach this threshold at a time when load building is most critical to the company. For instance, the cost of one conversion burner could exceed 0.1% of a nascent utility's revenues or capital investment. We, therefore, consider herein whether waiver of Chapter 820's requirements for BGC and MNG for promotional activities that exceed the *de minimis* threshold is warranted. [8]

B. Ratemaking Treatment

In determining whether it is reasonable to waive Chapter 820's requirements for promotional activity that exceeds the *de minimis* level, we must consider the potential impact on ratepayers. In that regard, it is important to note that the companies would continue to be subject to the ratemaking requirements in Chapters 820 and 830.

1. Chapter 820

> The intent of Chapter 820 is to protect a utility's core ratepayers from risk associated with the utility's non-core ventures and to provide a framework for the appropriate cost allocations to be used for core and non-core ventures.

See Order Provisionally Adopting Rule, Docket No. 97-886 (February 18, 1998) at 11. Section 6(A) of Chapter 820 states that "All non-core and *de minimis* utility activities will be treated as below the line for ratemaking purposes."

We have stated previously that granting a waiver from the requirements of Chapter 820 by allowing BGC and MNG to engage in promotional activities does not guarantee the recovery of any of the costs associated with these programs. For example, in Docket No. 1996-786, we stated that:

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[7] Section 9.

[8] It is troubling that neither BGC nor MNG requested the waiver. Failure to comply with the requirement in the future will result in adverse Commission action.

> We need not decide whether promotional allowances should be recovered in distribution gas utility's rates as long as they are operating under the condition of a rate freeze or rate cap plan because shareholders bear the risk that revenues will not exceed cost for the duration of such a plan. The issue only arises when and if we are requested to establish changes in rates for a utility.

See Order (Dec. 17, 1998) at 11. We reiterate that statement here. MNG will be operating under a rate freeze until March 31, 2004 and BGC will have a rate cap until 2008. Until such time that we review the companies' rates, the entire costs for these programs and promotions will be borne by the shareholders. Though promotional activities such as low cost conversion burner programs are arguably non-core, the intended ratepayer protections of Ch. 820 are served as long as there is a rate freeze or rate plan in effect.

Because we find that under a rate freeze or rate cap regulation, shareholders, not ratepayers, bear the risk that revenues will not exceed the cost of the promotional activities, we conclude that granting a waiver of the non-core services requirements for promotional activities that exceed the *de minimis* threshold level is not inconsistent with the ratepayer protection purpose of Chapter 820. Further, we do not see any benefit in this case of limiting the ability of BGC and MNG to engage in promotional activities. Accordingly, we grant a limited waiver for MNG and BGC from Chapter 820's requirements for promotional activities that exceed the *de minimis* threshold level, so that those services are not required to be conducted in a separate subsidiary and are not at this time subject to an investment limit. Because we do not require these activities to be conducted in a separate subsidiary, the affiliate dealing requirements such as adherence to codes of conduct and limitations on investment to affiliates are not applicable. However, because these promotional activity costs could come under review in a rate case or in a future review of the appropriate treatment of promotional activity costs for these entities, we do require MNG and BGC to account for the costs of these activities and services in accordance with the specifications in Section 4 of the rule.[9] Finally, we have effectively waived the filing requirements of Section 7 through our prior Orders for promotional activities undertaken by MNG and BGC, which require simply that they file tariffs for each promotional program without further prior Commission review at this time. We can reevaluate whether to continue to exempt promotional costs from certain Chapter 820 requirements for MNG and BGC going forward at the time of their rate cases.

2. Chapter 830

In addition to adhering to the ratemaking guidelines in Chapter 820, our position in this Order on the ratemaking treatment for promotional activities of start-

[9] While we do expect the Companies to persuasively document its valuation methodology, we will not require that it develop a formal cost manual for promotional activities.

up gas utilities is also consistent with Chapter 830. In fact, Section 5(C) of that Chapter states that

> no gas utility shall recover from any person other than its shareholders or other owners for any expenditures, contributions, expenses, or costs of such utility incurred with respect to institutional advertising, promotional advertising or promotional allowances.

MNG and BGC will continue to be subject to that provision.[10]

III. CONCLUSION

We allow BGC and MNG to continue to conduct promotional activities that exceed the Chapter 820 *de minimis* threshold to increase load and customer base. They are not required to conduct the programs in a separate subsidiary or to adhere to other provisions of the Rule as outlined above. Although the costs of these programs currently inure to shareholders, we restate here, as we have in Docket Nos. 2001-236 and 2001-287, that we are in no way ensuring future rate recovery of the program costs and that the utility seeking rate recovery has the burden of demonstrating that rate recovery is warranted. In addition, the companies must continue to comply with all other requirements for promotional activities.

Accordingly, we

O R D E R

1. That, for both Maine Natural Gas LLC and Bangor Gas Company LLC, the requirements of Chapter 820 specified herein are waived for promotional activities in excess of the *de minimis* threshold level until the time of the next rate review;

2. That we make no finding about the ratemaking treatment of those programs; and

3. That the Companies shall otherwise comply with the provisions of Chapters 820 and 830 and all other provisions of law when undertaking promotional programs.

[10] Despite the non-recovery policy established in Chapter 830, the rule also acknowledges that the Commission may consider whether a request for allowance of such expenditures as an operating expense for ratemaking purposes is just and reasonable. Chapter 830 §5 (C) paragraph 2.

Dated at Augusta, Maine, this 24th day of March, 2003.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.